

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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5 KEN WALTERS, et al.,

6 Plaintiffs,

7 NO. C05-4986 TEH

8 v.  
9 WESTCON MICROTUNNELING,  
10 Defendants.

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ORDER TO SHOW CAUSE AND  
CASE MANAGEMENT ORDER

This matter came before the Court on Monday, July 17, 2006, at 1:30 PM for a case management conference. Mr. James Wesser appeared on Plaintiffs' behalf, but no appearances were made on Defendants' behalf. While Defendant Westcon Microtunneling, Inc., a Utah corporation, was dismissed with prejudice pursuant to stipulation on February 13, 2006, Defendants Modern Continental Construction Co., Inc., a Massachusetts corporation, and Westcon Microtunneling, Inc., a division of Modern Continental Construction Co., Inc., remain in this case.

Mr. Wesser represented to the Court that he has been in close communication with Ms. Theresa Powers, general counsel at Modern Continental Construction Co., Inc., and that all remaining parties are close to finalizing a settlement agreement.<sup>1</sup> Mr. Wesser further represented to the Court that he informed Ms. Powers of the July 17 case management conference and asked her to participate, but that Ms. Powers stated that she was located out of state and was not planning to make an appearance.

<sup>1</sup>It is unclear whether Ms. Powers represents both of the remaining defendants or solely represents Modern Continental Construction Co., Inc. In any event, Mr. Wesser represented to the Court that his settlement discussions with Ms. Powers were intended to resolve the entire case and that any defendants not represented by Ms. Powers would be dismissed.

1        However, if Ms. Powers believed it was unduly burdensome for her to attend the case  
2 management conference in person, the proper course would have been to request permission  
3 to appear telephonically. It is unacceptable for counsel to simply choose not to appear for a  
4 Court-ordered hearing. Accordingly, IT IS HEREBY ORDERED that Ms. Powers shall  
5 appear **in person** before this Court on **Monday, August 7, 2006, at 10:00 AM**, to show  
6 cause as to why monetary or other sanctions should not be imposed for her failure to appear  
7 for the July 17 case management conference. If Ms. Powers wishes to file a written response  
8 to this order to show cause, she shall do so on or before **July 31, 2006**.

9       The parties shall also appear for a further case management conference on **August 7,**  
10 **2006, at 10:00 AM.**<sup>2</sup> As ordered at the July 17 case management conference, no further case  
11 management statement is necessary; however, if the parties wish to inform the Court of  
12 further developments in this case, they shall do so by filing a joint case management  
13 statement on or before **July 31, 2006.**

14        Although it appears that Modern Continental Construction Co., Inc., was served on  
15 December 20, 2005, the party has yet to make an appearance in this Court. As a result,  
16 Ms. Powers does not yet appear on the Court's service list for this case. Consequently, the  
17 Clerk shall serve a copy of this order on Ms. Powers at the following address, which was  
18 provided to the Court by Mr. Wesser: Ms. Theresa Powers, General Counsel, Modern  
19 Continental Construction Co., Inc., 600 Memorial Dr., Cambridge, MA 02139.

21 | IT IS SO ORDERED.

22  
23 Dated: 07/18/06

Thelton E. Henderson  
THELTON E. HENDERSON, JUDGE  
UNITED STATES DISTRICT COURT